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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,004	06/05/2002	Carlo Ghisalberti	3006-0044	6429

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Pennic & Edmonds
1155 Avenue of Americas
New York, NY 10036-2711

EXAMINER

LAMM, MARINA

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 03/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/088,004

Applicant(s)

GHISALBERTI, CARLO

Examiner

Marina Lamm

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12/11/03.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 30-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 30-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Acknowledgement is made of the amendment filed 12/11/03. Claims pending are 30-38. Claims 1-29 have been cancelled.

Claim Objections

1. Claim 36 is objected to because of the following informalities: the word "theophilline" is misspelled. Appropriate correction is required.
2. Claim 38 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 38 recites the limitation "wherein the step of determining the presence of at least one of fatty deposits and cellulite comprises determining the presence of dimpled skin." Claim 38 does not further limit Claim 30 because Claim 30 recites the same method step, i.e. "determining the presence of dimpled skin."

Claim Rejections - 35 USC § 102

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 30-36 and 38 are rejected under 35 U.S.C. 102(e) as being anticipated by Halvorsen et al. (US 2001/0041708).

Halvorsen et al. teach a method for reducing the signs of cellulite comprising applying onto the skin of a patient a cream composition containing 0.1-10% of 10-trans, 12-cis conjugated linoleic acid in a cosmetically acceptable carrier. See Examples 2 and 3; Claim 1.

Art Unit: 1616

The compositions of Halvorsen et al. may include anti-cellulite xanthine compounds such as caffeine and/or theophylline. See [0052]; Claims 3 and 4. The method of Halvorsen et al. inherently includes the claimed step of determining the presence of cellulite. See [0003].

Thus, Halvorsen et al. teach each and every limitation of Claims 30-36 and 38.

4. Applicant cannot rely upon the foreign priority papers to overcome this rejection because a translation of said papers has not been made of record in accordance with 37 CFR 1.55. See MPEP § 201.15.

Claim Rejections - 35 USC § 103

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 30-36 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kirby et al. (WO 00/01351 or US 6,444,234) either alone or in view of Cho et al. (US 5,667,793).

Kirby et al. exemplify an aqueous cream formulation for promoting cellulite removal containing 0.3% by weight of CLA in combination with theophylline. See Example 12. The reference does not explicitly teach the claimed concentration of CLA. However, there appears to be no criticality in the concentration of CLA since the prior art recognizes and obtains the same result, i.e. cellulite removal. Therefore, the determination of optimal concentration of CLA by routine experimentation is obvious to one of ordinary skill in this art. One having ordinary skill in the art would have been motivated to do this because the reference demonstrates how to obtain the desired anti-cellulite properties of the composition. No unexpected result is seen that would demonstrate an unusual result over the generic teachings

Art Unit: 1616

of the anti-cellulite properties in the reference. Further, the Court has held that the term “about” is entitled to latitude in characterizing feature which is not critical to distinction over prior art. *General Foods Corp. v. Perk Foods Corp.* (DC NIII) 157 USPQ 14. With respect to the claimed limitation “determining the presence of dimpled skin of the person”, this step is either inherent or obvious in the Kirby et al. reference because (1) the composition of Kirby et al. is intended for the treatment of cellulite, and (2) the dimpled skin (cellulite) is readily noticeable by its “orange peel skin” or “cottage cheese” appearance. See Cho et al. at col. 1, lines 11-29.

7. Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over either Halvorsen et al. or Kirby et al. in view of Nechay (WO 90/12563).

Halvorsen et al. or Kirby et al. applied as above. Neither reference teaches a vanadium compound of the instant claims. However, Nechay teaches that topical vanadium formulations improve cosmetic appearance, rejuvenate skin, alleviate wrinkles, enhance tissue structure and heal damaged tissue. See Abstract; p. 2, lines 1-24; p. 24, lines 1-17; Examples. Vanadium salts have very low toxicity and skin irritation levels. See p. 12, lines 5-9. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the topical cosmetic or dermatological compositions of either Halvorsen et al. or Kirby et al. such that to include the vanadium compounds of Nechay. One having ordinary skill in the art would have been motivated to do this to obtain topical compositions which enhance tissue structure, heal damaged tissue and rejuvenate skin without causing toxicity or skin irritation as suggested by Nechay.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marina Lamm whose telephone number is (571) 272-0618. The examiner can normally be reached on Mondays, Wednesdays and Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page, can be reached at (571) 272-0602.

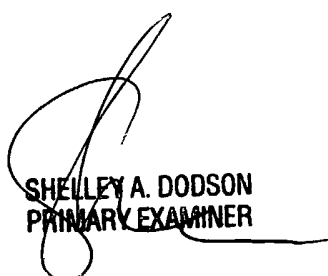
The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published

Art Unit: 1616

applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ml
2/28/04



SHELLEY A. DODSON
PRIMARY EXAMINER